

## **MEMORANDUM**

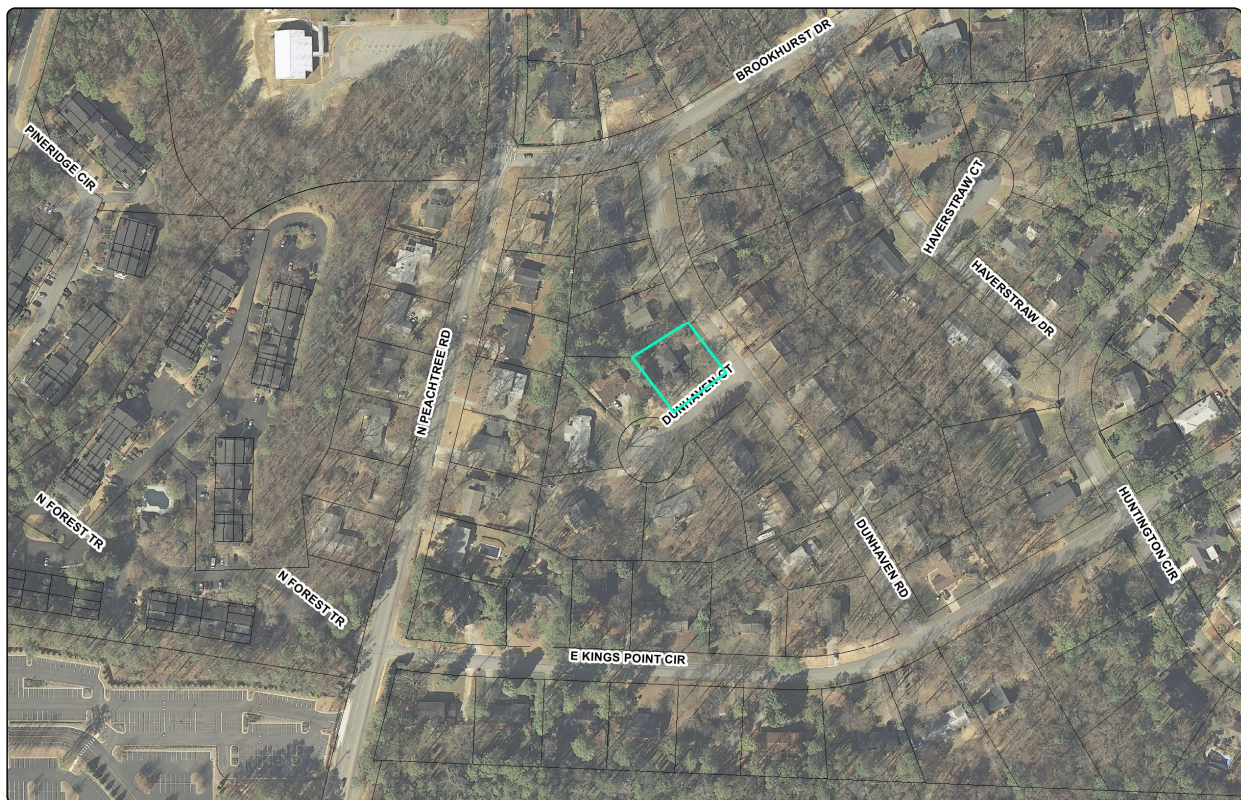
**To:** Zoning Board of Appeals

**From:** Howard Koontz, AICP

**Date:** October 4, 2012

**Subject:** **ZBA 12-101 a and b:** Jerry Ragan, applicant on behalf of Deborah Caras, owner of 4450 Dunhaven Road, Dunwoody GA, 30338, seeks the following: Variance from Chapter 27, Section 27-225 to reduce the rear yard setback and Section 27-228 to increase the maximum lot coverage. The tax parcel number is 18 343 05 015.

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### **ITEM DESCRIPTION**

The site is located along Dunhaven Road, south of its intersection with Brookhurst Drive, off North Peachtree Road. The property is zoned R-85 (Single-Family Residential District) and is adjacent to R-85 on all sides. The applicant's request is to increase the maximum allowable



impervious surface ratio from 35 percent to 37 percent and to reduce the rear yard setback from 40 to 20 feet to erect a covered porch attached to the rear of the house.

## BACKGROUND

The lot on which the home sits totals 0.334 acres, or 14,560 square feet. The property has mature tree cover on the western and southern portions and is relatively uncovered on the remainder of the lot. The lot is generally flat but slopes downward toward the eastern property line.

The proposed construction is comprised of a rear uncovered patio addition (14'x19') on the northern rear of the house and a covered patio (14'x18') on the southern rear of the house. The lot is already nonconforming with an impervious surface ratio of 35.38 percent, according to the applicant's calculations; the proposal would increase the impervious surface ratio. The existing concrete patio as well as the proposed uncovered and covered portions of the patio encroach the rear yard setback up to 20 feet.

Direction	Zoning	Use	Current Land Use
N	R-85	Residential	Single-Family Residential
S	R-85	Residential	Single-Family Residential
E	R-85	Residential	Single-Family Residential
W	R-85	Residential	Single-Family Residential

## ANALYSIS

The applicant seeks a variance to the following sections of the city Zoning Ordinance:

Sec. 27-225 – Lot Setbacks  
(5)Rear yard. 40 feet.

Sec. 27-228. - Lot coverage.

The lot coverage of each lot [in the R-85 zoning district] shall not exceed 35 percent.

Chapter 27, §27-1574 identifies the following criteria for evaluation that shall be examined when determining the appropriateness of a variance:

Variances from the provisions or requirements of this Chapter shall be authorized only upon making all of the following findings:

- a. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions, which were not created by the owner or applicant, the strict application of the requirements of this Chapter would deprive

the property owner of rights and privileges enjoyed by other property owners in the same zoning district; ***The lot totals 14,560 square feet, which is similar to some of the single-family home lots likewise zoned R-85. The house as it exists today exceeds the 35 percent, and they are proposing to increase that further. Additionally, the patio currently encroaches the rear setback, and they will increase the amount of encroachment as it relates to the distance from the property line and the aggregate amount of structure that encroaches. As such, the lot does not present any size, shape, or topographical conditions.***

- b. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located; ***Affording the applicant the permission to construct this structure would constitute a special privilege, unavailable to other properties in the zoning district and elsewhere because the property can be continued to be utilized for residential purposes without the additional improvements. The Code provides an alternative to impervious paving that would not affect the lot coverage. The applicant has not proposed to use any of this technology. Additionally, there are other buildable portions of the lot that would not preclude the applicant from constructing a similar structure with other architectural considerations based on the floor plan of the house.***
- c. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located; ***Impervious surfaces in the region in recent years can attribute to the incidence of flash flooding due to increased velocity and volume of water during storm surges and decreased stream quality. Although a nonconformity already exists on the property, it should be required to come into compliance prior to any additional development to be respectful of regional flooding conditions caused by substantial development. There are not any evident public welfare concerns regarding the rear setback.***
- d. The literal interpretation and strict application of the applicable provisions or requirements of this Chapter would cause undue and unnecessary hardship; ***Any hardship, real or perceived, would not be undue because the project proposed is discretionary on the part of the applicant. The applicant purchased the property inclusive of the regulations regarding lot coverage and building setbacks. The primary hardship on the part of the applicant, then, is not the circumstances that require the project addition, but the plan on which the proposed construction is based. The proposed addition is too large to be facilitated on the lot as indicated. Without relaxing the city impervious surface ratios and setback requirements, the project cannot go forward as drawn, and without a variance, the applicant may only add pervious surfaces to their lot. As such, the applicant would be permitted to replace existing impervious surfaces with pervious pavers that would reduce the lot coverage below the maximum allowed. Since there is an alternative available, an undue hardship does not exist.***



- e. The requested variance would be consistent with the spirit and purpose of this Chapter and the City of Dunwoody Comprehensive Plan text. ***The applicant's request is not consistent with the spirit and purpose of the zoning ordinance, which fosters deep set-backs in low-density residential areas such as R-85, and limits the bulk and performance of parcels with 35-foot building heights and 35% impervious surface ratios; the application does not compromise the spirit of the Comprehensive Plan, as the home will be used for residential purposes after construction is complete; however, the Plan does favor a regional consideration to future development.***

## RECOMMENDATION

Staff recommends the application for lot coverage be **denied** as discretionary.

If the Zoning Board of Appeals wishes to consider approval of the request, the following conditions should be considered:

- Water quality BMPs must be utilized to improve the water quality of the storm runoff from the development site. Stormwater management systems (which can include both structural stormwater controls and better site design practices) must be designed to remove 80 percent of the average annual post-development total suspended solids load. As a minimum, the runoff from the first 1.2 inches of rainfall must be treated. Acceptable BMPs for treating stormwater runoff are set forth in the Georgia Stormwater Management Manual.
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Staff recommends the application for rear yard setback be **denied** as discretionary.

## ATTACHMENTS

- Location Map
- Application materials
- Site Plan